

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

MICHAEL JOHN MODENA,

CIVIL NO. 06-1008 (ADM/JSM)

Petitioner,

v.

REPORT AND RECOMMENDATION

FEDERAL BUREAU OF PRISONS and  
Warden, R.L. MORRISON,  
Federal Prison Camp,

Respondent.

The above matter came on before the undersigned upon Petitioner's Motion for Release on Habeas Corpus Writ [Docket No. 12] and petitioner's Motion for Summary Default Judgment [Docket No. 14]. The matter was referred to the undersigned by the District Court for a Report and Recommendation pursuant to 28 U.S.C. § 636 (b)(1)(B).

**FACTUAL BACKGROUND**

On April 6, 2006, this Court ordered the Government to file a response to petitioner's Amended Petition and Motion to Order Injunction Against B.O.P. DNA Collection within thirty (30) days of the Order. [Docket No. 10]. On May 9, 2006, petitioner filed a Motion for Release on Habeas Corpus Writ, and on May 16, 2006, he filed a Motion for Summary Default Judgment against the Government, based on the Government's failure to respond to this Court's April 6, 2006 Order [Docket Nos. 12, 14]. On May 11, 2006, the Government filed a Motion for Extension of Time to File Response to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Docket No. 13]. In this motion, the Government represented that it had inadvertently overlooked the electronic notification of the Court's April 6, 2006 Order, and that on May 10, 2006, it had contacted the Bureau of Prisons ("BOP") requesting their assistance in addressing petitioner's claims in the Amended

Petition and motion for injunction. The BOP informed the Government that it had a number of pressing matters to address and would turn their attention to this matter as soon as possible. Consequently, the Government requested an extension to May 26, 2006, to allow it sufficient time to receive the materials from the BOP and to respond to the petition and motion.

In order to insure that petitioner's claims are decided on their merits, and not on the inadvertent error of counsel, this Court granted respondent's Motion for Extension of Time to File Response to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, in an Order dated May 18, 2006. For that reason, this Court recommends that petitioner's motions for release and default judgment be denied as moot.

#### **RECOMMENDATION**

In light of this Court's Order dated May 18, 2006, IT IS HEREBY RECOMMENDED that:

1. Petitioner's Motion for Release on Habeas Corpus Writ [Docket No. 12] be denied as moot; and
2. Petitioner's Motion for Summary Default Judgment [Docket No. 14] be denied as moot.

Dated: May 18, 2006

s/ Janie S. Mayeron  
JANIE S. MAYERON  
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties on or before **June 5, 2006** a copy of this Report, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection.